80-748

No. .....

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM,

GOLDA M. ROOT, *Petitioner*

v.

WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND, *Respondent*

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTION PRESENTED

When does a cause of action accrue on a claim by a beneficiary of a pension against the trustee of the pension, when the trustee has improperly advised the beneficiary that she as surviving widow is not entitled to benefits, and at the time the widow is so advised she has no information which would lead her to believe that the trustee has made an improper determination of the benefits.

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Petitioner Golda M. Root respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 11, 1980.

OPINION BELOW

The opinion of the Court of Appeals, not fully reported, appears in the Appendix hereto. No opinion was rendered by the District Court for the Northern District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 11, 1980. This petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Golda M. Root is the widow of Howard Warren Root who had been and was at the time of his death a member of the Teamsters Union. After his death in January, 1966 Mrs. Root applied for pension benefits. The Western Conference of Teamsters Pension Trust Fund denied her claims for either a death benefit or a spouse survivor benefit on the ground that Mr. Root did not have fifteen years of continuous unbroken service, thus rendering his widow ineligible for benefits.

In fact, the Trust Fund's determination that Mr. Root did not have fifteen years of continuous unbroken service was incorrect and apparently resulted from an incorrect interpretation of Mr. Root's union cards by the Trust Fund. Those union cards in the possession of the Trust Fund showed that Mr. Root had more than fifteen years of continuous unbroken service and that Mrs. Root should have been given her appropriate benefits under the plan which Mr. Root had contributed to while he was a Teamster.

Mrs. Root accepted the determination by the Trust Fund that she was not eligible for benefits. She did not have access to the union cards or the other information available to the Trust Fund. She had no other sources of information from which she could determine that the Trust Fund had made an error in determining here eligibility for benefits.

Eleven years after Mr. Root's death, Mrs. Root mentioned to her brother-in-law that she had never received any pen-

sion from the Trust Fund. Mrs. Root's brother-in-law began an investigation which led Mrs. Root to believe that she had been improperly denied her pension benefits. On October 31, 1977 Mrs. Root filed her complaint seeking pension benefits which she had improperly been denied by the Trust Fund.

On February 21, 1978 the District Court for the Northern District of California granted the Trust Fund's motion for summary judgment on the ground that Mrs. Root's claim was barred by the applicable statute of limitations, § 337(1) of the California Code of Civil Procedure, and by plaintiff's own laches.

The Court of Appeals affirmed the order of the District Court, holding that although the California statute of limitations for four years applied, nevertheless the federal rule is that the limitation period begins to run when the claimant discovers or should have discovered the act constituting the alleged violation, which was determined to be at the time of denial of benefits. The Court of Appeals determined that the Trust Fund did nothing which would result in its being estopped from asserting the limitation period as a bar. Finally, the Court of Appeals rejected Mrs. Root's argument that the Trust Fund owed her a fiduciary duty to handle her claim correctly, and that its failure to do so constituted a breach of that duty estopping the Trust Fund from asserting the statute of limitations, on the ground that there is no support for such a proposition in the federal law.

REASON FOR GRANTING THE WRIT

The decision below raises significant and recurring problems concerning the administration of pensions whose administration is determined by federal law, and the impact

of the lower court's decision will have unfortunate consequences for both claimants and the courts.

Although the denial of pension benefits to Mrs. Root is of great economic consequence to her, the amount of money itself is probably not of great importance to this Court. What is of major importance is the consequence of the lower court's opinion. Now, every claimant who is denied pension benefits will have to bring a lawsuit even if the claimant has no belief that the trustee improperly carried out its duties in determining eligibility or be barred from recovering even if at a later date the claimant learns that the trustee made an improper determination of ineligibility.

The question is of great importance because of the number of pension funds which are subject to federal law, such as claims for pension benefits under the National Labor Relations Act and the Employee Retirement Income Security Act.

The issue is whether a trustee of a pension fund, owing a fiduciary duty to the beneficiary of the fund, should be allowed to avoid liability for its errors in determining eligibility for pension benefits which its members have paid for.

Existing federal law indicates that the trustee should be liable. Petitioner agrees that because there is no limitation period contained in the federal statutes creating jurisdiction (29 U.S.C. § 158(a)), the limitation period is borrowed from state law. *Johnson v. Railway Express Agency,* 421 U.S. 454, 462, 44 L.Ed.2d 295, 302 (1975); *Briley v. State of California,* 564 F.2d 849, 854 (9th Cir. 1977). Appellant agrees that the applicable limitation period under California law is four years. California Code of Civil Procedure § 337(1).

The critical issue is when the cause of action accrues. Petitioner contends that the Trust Fund is a fiduciary and

the statute of limitations should not begin to run until she discovered or should have discovered the facts in issue or until the fiduciary made a full disclosure. Under California law, when a claimant is ignorant of the act of the fiduciary that constitutes the breach of duty, the cause of action does not accrue until the claimant discovers or should discover the material facts because such a rule prevents the fiduciary from obtaining immunity for an initial breach of duty by a subsequent breach of the obligation of disclosure. *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal.3d 176, 98 Cal.Rptr. 837 (1971); *Amen v. Merced County Title Co.*, 58 Cal.2d 528, 25 Cal.Rptr. 65 (1962).

In determining whether to apply state law, this Court has noted that "considerations of state law may be displaced where the application would be inconsistent with the federal policy underlying the cause of action under consideration." *Johnson v. Railway Express Agency, supra,* at 465.

More particularly, in that case this Court applied state law to resolve whether there were any circumstances that would suspend or toll the running of the state statute of limitations. This Court observed,

> "Any period of limitation . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action. Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application. In borrowing a state period of limitation for application to a federal cause of action, a federal

> court is relying on the State's wisdom in setting a limit, and exceptions thereto, on the prosecution of a closely analogous claim."
>
> *Johnson v. Railway Express, supra,* at 463-464.

The Court applied the state statute of limitations and the interrelated "provisions regarding tolling, revival, and questions of application," because there was nothing peculiar to the federal civil rights action involved that would justify special reluctance in applying the state statute.

Petitioner here contends that there is nothing peculiar to her claim against the trustee which should justify any special reluctance in applying state law, and further there is nothing inconsistent with applying that state law given the federal policy underlying Petitioner's cause of action under consideration.

Under California law, a fiduciary relationship exists between the trustees administering the plan and employees covered by the plan. *Malone v. Western Conference of Teamsters Pension Trust,* 110 Cal.App.3d 538, 544, ...Cal.Rptr..... (1980). Under California law, when a fiduciary conceals material facts that should have been made known, the statute of limitations does not begin to run until the injured party becomes aware of or should have become aware of the concealment of facts which would form the basis of the claim. *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra; Amen v. Merced County Title Co., supra.*

In balancing the policy of prohibiting the prosecution of stale claims against the policy of a cause of action not accruing against the fiduciary until the claimant becomes aware of the undisclosed material facts, the balance clearly is with the latter. To rule otherwise would overlook the hardship to the surviving spouse of an employee who has contributed over the years to a pension fund. The pension

fund or union will have the records which show the history of union membership and contribution to the fund. The surviving spouse, not having the information available because the other spouse is now dead, will be at a disadvantage in knowing whether the denial of pension rights is correct. If the surviving spouse has no other information except that supplied by the trust fund, is that surviving spouse required to bring a lawsuit when she has no information to believe that she is entitled to benefits? If the answer is affirmative, then the burden on the courts and on pension funds will be tremendously greater because every applicant who is denied benefits would necessarily be required to bring a claim to protect his or her interests.

Additionally, to apply the statute of limitations strictly would be to unjustly enrich the trust fund, which has received consideration from members of the union, but is not required to pay benefits which it would otherwise have had a legal obligation to pay.

Contrary to the lower court's determination that Mrs. Root's argument is without support in the federal law, her position not only finds support in the federal law—by the teaching of *Johnson v. Railway Express Agency, supra,* her position is correct under the federal law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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Appendix A

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No. 78-1945

MEMORANDUM

GOLDA M. ROOT,
Appellant,

vs.

WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND,
Appellee.

On Appeal from the United States District Court for the Northern District of California

Before: WRIGHT, CHOY and ALARCON, Circuit Judges.

Golda Root appeals the grant of the Pension Fund's motion for summary judgment. She claims that the Pension Fund should be estopped from asserting the statute of limitations as a bar to her action for Spouse Survivor Benefits.

Appellant's causes of action for pension benefits are cognizable under the National Labor Relations Act Section 301(a), (Title 29, United States Code Section 158(a)).

Rehmar v. Smith, 555 F.2d 1362, 1367-68 n.3 (9th Cir. 1977). Since there is no limitation period contained in this federal statute, the limitation period is borrowed from state law. *Briley v. State of California,* 564 F.2d 849, 854 (9th Cir. 1977). As appellant concedes, the applicable limitation period is four years. California Code of Civil Procedure Section 337(1). Nonetheless, "when a federal cause of action 'accrues' and the related question of whether it is 'tolled' by subsequent events, are federal questions." *Butler v. Local 823, Int. Bro. of Teamsters, Etc.,* 514 F.2d 442, 448-449 (8th Cir. 1975).

The general federal rule is that the limitation period begins to run on a claim when the claimant discovers or should have discovered in the exercise of reasonable diligence, the act constituting the alleged violation of his rights. *NLRB v. Don Burgess Const. Corp.,* 596 F.2d 378, 382 (9th Cir. 1979). The denial of a request for benefits under a pension plan is both the act constituting the possible violation of rights and notice to an applicant of that possibility. See *Morgan v. Laborers Pension Trust Fund for N. Cal.,* 433 F.Supp. 518, 522 n.5 (N.D. Cal. 1977); accord, *Reiherzer v. Shannon,* 581 F.2d 1266, 1272 (7th Cir. 1978). Therefore, the four year limitation period began to run on June 29, 1966, barring appellant's suit after June 29, 1970 unless the Pension Fund should be estopped from asserting the limitation period as a bar.

Appellant has not shown that the Pension Fund induced her to refrain from commencing suit or that it fraudulently concealed facts which prevented her from realizing the possibility that her rights were being infringed. She merely contends that the fund wrongfully denied her claim for benefits. Be that as it may, there was nothing about the Pension Fund's denial of benefits to appellant that lulled her

into a false sense of security as to the status of her claim or misled her as to the time in which she could bring suit. *American Pipe & Construction v. Utah,* 414 U.S. 538, 559 (1974). To the contrary, when it rejected her claim, the Pension Fund gave appellant the specific reason for the denial: at the time of his death, appellant's husband did not have the 15 years of unbroken union membership necessary for her to be eligible to receive benefits.

Appellant's argument that the Pension Fund owed her a fiduciary duty to correctly handle her claim and its failure to do so constituted a breach of that duty estopping it from asserting the statute of limitations as a bar to her action is without support in the federal law.

AFFIRMED.